

for the benefit of the party against whom injunctive relief is sought.²⁰

Subsection (i) of new Section 47 contains a "sunset" clause under which the pilot program will expire in one year unless the Commission approves any proposed rule change filed by the NASD under Rule 19b-4 to extend the pilot period or to eliminate the expiration date. The NASD has stated that it intends to assess, among other things, whether parties should be restricted to arbitrator-issued interim injunctions during this pilot period. In connection with this review, the NASD has undertaken to provide two reports to the Commission on the usage and operation of new Section 47.²¹

D. Resolution of the Board of Governors

The rule change amends the Resolution of the Board of Governors²² to provide that failure to comply with any interim injunctive order issued pursuant to new Section 47 will be added to the types of conduct that may be considered to violate Article III, Section 1 of the Rules of Fair Practice.

III. Comments Received

As noted above, the Commission received six comment letters concerning the rule change. Two commenters supported the rule change.²³ Two commenters did not express support for or opposition to the rule change.²⁴ Two commenters objected to the rule change.²⁵

The Bryan Cave Letter asks whether a temporary injunction is intended to refer to a court-issued temporary restraining order, court-issued preliminary injunction or both. The NASD amended the proposed rule change to clarify that the term "temporary injunction" is intended to encompass both temporary restraining orders and preliminary injunctions issued by courts and interim injunctions issued by arbitrators.²⁶

The Bryan Cave Letter also stated that the new Section does not distinguish clearly between legal standards to be applied in issuing an immediate injunction and a regular injunction. The NASD has stated that it expects the parties to present arguments to the arbitrators to permit them to determine appropriate standards for decision. As noted above, the NASD also has represented that it will train arbitrators

hearing applications for interim injunctive relief to ensure that any relief granted does not disadvantage unfairly any party against whom relief is sought.

The Bryan Cave Letter also noted that the NASD intended to hold hearings on immediate injunctive relief in only 3 cities. The Bryan Cave Letter noted that individuals will find it a greater burden to travel for a hearing than will firms. The NASD has represented to the Commission that it will be sensitive to such concerns and will attempt to accommodate parties to the extent possible.²⁷ In this regard, the NASD has stated that it intends to hold hearings on a telephone basis whenever an in-person hearing would pose an undue burden to a party if the nature of the hearing and the evidence to be presented will permit.

Bryan Cave and PaineWebber noted that Subsections (f) and (g) provide that the arbitration concerning a matter in which either an interim injunction under the section or a court injunction has been issued will be expedited, under a schedule specified by the arbitration panel appointed under the Code. The Bryan Cave Letter and the PaineWebber Letter argued that the NASD should set time parameters for panels as they schedule a hearing on the merits; otherwise, an expedited hearing may not in fact be expedited. As noted above, Section 47 has been amended to require the Director to appoint a panel immediately following the issuance of an Immediate Injunctive Order or Regular Injunctive Order and to permit the arbitrators to specify procedures and time limitations for actions by the parties different from those specified in the Code.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act²⁸ because the rule change will facilitate the arbitration process in the public interest by codifying authority of arbitrators to grant interim injunctive relief in intra-industry disputes that are subject to NASD arbitration. The Commission believes that it is in the public interest to provide parties with the opportunity to have applications for interim injunctive relief considered in the same forum as hearings on the merits of the dispute.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR-NASD-93-38 be, and hereby is, approved on a one-year pilot basis, effective January 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36151; File No. SR-NASD-95-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Statement of Policy To Establish Internal NASD Procedures Delegating to the NASD Staff and the Fixed Income Committee Authority To Review Requests by Members for Exemptions From Rule G-37(b) of the Municipal Securities Rulemaking Board

August 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 23, 1995,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to adopt a statement of policy to establish internal NASD procedures delegating to the NASD staff and the Fixed Income Committee the authority to review requests by members for exemptions from Rule G-37 of the Municipal Securities Rulemaking Board ("MSRB"). MSRB Rule G-37² prohibits members from engaging in municipal securities business if certain political contributions have been made to municipal issuers.³ Below is the text of

¹ The NASD initially submitted the proposed rule change on April 15, 1995. Amendment No. 1 deleted all portions of the proposed rule change addressing the ability of NASD members to apply to the Commission for review of any denial by the NASD of a member's request for exemption from Municipal Securities Board Rule G-37. Amendment No. 2 revised the proposed rule change to clarify the types of violations of Rule G-37 for which a member could request exemptions.

² MSRB Manual, General Rules, Rule G-37 (CCH) ¶3681.

³ The proposed statement of policy would establish internal NASD procedures and would not amend the NASD Code of Procedure or other NASD rules.

²⁰ Amendment No. 3, *supra* n. 1.

²¹ *Id.*

²² NASD Manual, Code of Arbitration Procedure, (CCH) ¶ 3744.

²³ Piper, Lane.

²⁴ PaineWebber, NELA.

²⁵ Bryan Cave, Baumgardner.

²⁶ Amendment No. 2, *supra* n. 1.

²⁷ Amendment No. 3, *supra* n. 1.

²⁸ 15 U.S.C. 78o-3.

the proposed text change. New language is italicized.

Procedure of the Board of Governors for the Granting of Exemptions From MSRB Rule G-37

1. The Board of Governors ("Board") delegates authority to John E. Pinto, Executive Vice President, Regulation Business Line, to authorize a member of the staff to review requests of NASD members for exemptions pursuant to MSRB Rule G-37(i).

2. The staff authorized to review exemption requests shall issue a written decision to the member which shall set forth the decision and that the member may request a review of the staff decision by the Fixed Income Committee of the NASD within 15 calendar days of the date of the decision.

3. The Board delegates authority to the Fixed Income Committee, or a subcommittee thereof, to review the appeal of a member from a decision of the staff with respect to the member's request for an exemption from MSRB Rule G-37.

4. The review conducted by the staff of the Regulation Business Line and the Fixed Income Committee, or a subcommittee thereof, of a member's request for exemption will be on the written record, including any submissions made by the member in support of its request for exemption.

5. The decision of the Fixed Income Committee, or a subcommittee thereof, may be reviewed by the Board solely upon the request of one or more Governors. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of the Fixed Income Committee decisions. In reviewing any decision of the Fixed Income Committee, the Board may affirm, modify or reverse the decisions of the Fixed Income Committee or remand the matter to the Fixed Income Committee with appropriate instructions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission approved MSRB Rule G-37 on April 7, 1994.⁴ MSRB Rule G-37(b) prohibits any broker, dealer, or municipal securities dealer from engaging in municipal securities business with any issuer within two years after any contribution to an official of that issuer made by that broker, dealer, or municipal securities dealer, any municipal finance professional associated with that broker, dealer, or municipal securities dealer, or any political action committee controlled by that broker, dealer, or municipal securities dealer. The two year prohibition, however, is not triggered by contributions, by a municipal finance professional to issuer officials for whom that municipal finance professional was entitled to vote if such contribution in total, did not exceed \$250 per official per election. Subsequently, on June 3, 1994, the Commission granted accelerated approval to an amendment to MSRB Rule G-37⁵ to provide a procedure for a broker, dealer, or municipal securities dealer to seek exemptive relief from MSRB Rule G-37(b) if that broker, dealer, or municipal securities dealer discovers that a prohibited political contribution was made. Pursuant to Release 34-34160, subsection (i) to MSRB Rule G-37 permits the NASD to exempt, conditionally or unconditionally, an NASD member who is prohibited from engaging in municipal securities business with an issuer pursuant to subsection (b) of MSRB Rule G-37 from that prohibition. MSRB Rule G-37(i)(i) provides that the NASD shall consider among other factors, whether such exemption is consistent with the public interest, the protection of investors and the purposes of this rule. MSRB Rule G-37(i)(ii) sets forth further criteria for the granting of the exemption by requiring that the MSRB member have in place procedures designed to ensure compliance with the rule,⁶ had no actual knowledge of the

contributions, has taken appropriate steps to obtain return of the contribution(s), and has taken other remedial measures as may be appropriate.

Release 34-34160 states that the MSRB believes that exemptions from MSRB Rule G-37 should be granted only if a disgruntled employee contributes to an issuer official for the purpose of injuring the member or if an employee makes a number of small contributions during an election cycle (e.g., four years) which, when consolidated, amount to slightly over the \$250 de minimis exemption (such as contributions totalling \$255). It also states that the MSRB would expect that the exemption not be routinely requested by dealers and that exemptions would be granted by the NASD only in limited circumstances.⁷

In order to implement a procedure for reviewing requests for NASD member exemptions anticipated under MSRB Rule G-37, the NASD proposes to adopt a statement of policy that would establish an NASD internal procedure to grant exemptions from MSRB Rule G-37. The proposed statement of policy would be an internal procedure and would not amend the NASD Code of Procedure or other NASD rules.

The NASD proposes that the initial determination on whether to grant a member's request for exemption from MSRB Rule G-37 be made by the staff of the Regulation Business Line, as assigned by the Executive Vice President of Regulation, which will issue a written decision. If the staff determines to deny the member's request for exemption, the written decision must include a statement advising the member that it has 15 days in which to appeal the initial staff determination to the Fixed Income Committee of the NASD.

The NASD proposes that the Fixed Income Committee, or a subcommittee thereof, be delegated authority by the

contribution made by the dealer, dealer-controlled political action committees and municipal finance professionals so that it can determine where and with whom it may or may not engage in municipal securities business. In addition, the dealer must have information on executive officer contributions and political party payments and consultant hiring practices for disclosure purposes. Moreover, the dealer must ensure that those persons and entities subject to MSRB Rule G-37 are not causing the dealer to violate MSRB Rule G-37. Furthermore, the dealer must ensure that other people and entities hired to assist in municipal securities activities (e.g., consultants) are not being directed to make contributions, or otherwise being used as conduits, in violation of MSRB Rule G-37.

⁷ Release 34-34160 also states that the MSRB will seek information from the NASD regarding the granting of any exemptions in order to monitor the implementation of this provision, and to determine if any changes are necessary.

⁴ Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994).

⁵ Securities Exchange Act Release No. 34160 (June 3, 1994), 59 FR 30376 (June 13, 1994) ("Release 34-34160").

⁶ The MSRB clarified its view regarding effective compliance procedures for Rule G-37 in a letter dated March 14, 1995 from Christopher A. Taylor, Executive Director, MSRB, to John E. Pinto Jr., Executive Vice President—Regulation, NASD. That letter states that the MSRB believes that Rule G-37 requires a dealer to have information regarding each

Board to review the appeal of a member regarding a NASD staff denial of an exemption from MSRB Rule G-37.

The decision of the Fixed Income Committee, or a subcommittee thereof, may be reviewed by the Board solely upon the request of one or more Governors. Such a review would be undertaken solely at the discretion of the Board and will be in accordance with resolutions of the Board. In reviewing any decision of the Fixed Income Committee, the Board may affirm, modify or reverse a decision of the Board and will be in accordance with resolutions of the Board. In reviewing any decision of the Fixed Income Committee, the Board may affirm, modify or reverse a decision of the Board and will be in accordance with resolutions of the Board. In reviewing any decision of the Fixed Income Committee, the Board may affirm, modify or reverse a decision of the Board and will be in accordance with resolutions of the Board.

The NASD believes that the Fixed Income Committee is the appropriate reviewing body as the members of the Fixed Income Committee would have the requisite knowledge regarding the municipal business necessary to weigh the member's argument that the requested exemption would comply with the provisions and intent of MSRB Rule G-37. In addition, the use of the Fixed Income Committee would ensure uniformity throughout the country on the granting of such exemptions which the MSRB intended to be granted very infrequently. The appeal of such matters to a national committee also has the advantage of all determinations being made in one forum, thereby avoiding disparate applications of the exemptive provision that might occur if the NASD's District Business Conduct Committees were assigned this responsibility.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act in that it establishes a procedure to enforce compliance with MSRB Rule G-37 whereby the NASD staff and the Fixed Income Committee may review member requests for exemption from MSRB Rule G-37 and may grant exemptions only within the limited circumstances anticipated by the MSRB and MSRB Rule G-37 as approved by the Commission. Moreover, the NASD believes the proposed rule change is consistent for the reasons discussed above with the provisions of Section 19(g)(1)(B) of the Act, which requires that the NASD, absent reasonable justification or excuse, enforce compliance with MSRB rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR-NASD-95-15 and should be submitted by September 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36140; File No. SR-NYSE-95-08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 and Amendment No. 2 To Proposed Rule Change Relating to Listed Company Relations Proceedings

August 23, 1995.

I. Introduction

On March 3, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new Rule 103C concerning procedures relating to initiation and conduct of a review of the relationship between a listed company and its specialist organization. On July 14, 1995, the NYSE submitted a letter amendment³ to the proposed rule change, and on July 28, 1995, submitted a formal amendment to the file.⁴

The proposed rule change was published for comment in Securities Exchange Act Release No. 35650 (April 26, 1995), 60 FR 21578. No comments were received on the proposal. The Commission is approving the proposal and soliciting comments on Amendment No. 1 and Amendment No. 2.

II. Description of the Proposal

The Exchange proposes to adopt new Rule 103C (Listed Company Relations Proceedings) to provide its listed companies and specialist units with a procedure for resolving non-regulatory issues that may arise between them.⁵ Proposed Rule 103C contains a formal procedure by which a listed company could make a written notification (known as an "Issuer Notice") to the Exchange's New Listings and Client Services Division of its desire to commence a proceeding to mediate and resolve such issues. The Exchange's Quality of Markets Committee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Associate Director, Division of Market Regulation, SEC, dated July 12, 1995 ("Amendment No. 1").

⁴ See Amendment No. 1 to File No. SR-NYSE-95-08 ("Amendment No. 2").

⁵ For example, a non-regulatory issue may include misunderstandings with respect to the frequency and adequacy of communications between a company and its specialist unit.